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FILED

2008 JUN 18 PM 4:21

U.S. DISTRICT COURT, CALIFORNIA  
SOUTHERN DISTRICT OF CALIFORNIA

BY KMH DEPUTY

8 IN THE UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 KAREL SPIKES,

Case No.: **'08 CV 1082 BEN JMA**

11 Plaintiff,

CIVIL COMPLAINT

12 vs.

13 DEMAND FOR JURY TRIAL  
[F.R.C.P. §38(b);  
14 Local Rule 38.1]

SYED M. TAHIR dba S S AUTO REPAIR;  
CULBERT FAMILY BYPASS TRUST 2-28-97  
and DOES 1 THROUGH 10, Inclusive,

15 Defendants.

16 Plaintiff, KAREL SPIKES (hereinafter referred to as  
17 "Plaintiff"), file this cause of action against Defendants SYED  
18 M. TAHIR dba S S AUTO REPAIR (hereinafter "S S AUTO REPAIR"),  
19 CULBERT FAMILY BYPASS TRUST 2-28-97 and DOES 1 THROUGH 10,  
20 Inclusive, and would show unto the Court the following:

21 I.  
22

23 JURISDICTION AND VENUE

24 1. This Court has original jurisdiction of this civil  
action pursuant to 28 USC §1331, 28 USC §§1343(a)(3) and  
25 1343(a)(4) for claims arising under the Americans with  
26 Disabilities Act of 1990, 42 USC §12101 et seq. and the Court's  
27 supplemental jurisdiction, 28 USC §1337.  
28

CR

1       2.   Venue in this Court is proper pursuant to 28 USC  
2 §§1331(b) and (c).

3       3.   Pursuant to 28 USC §1337(a), Plaintiff shall assert  
4 all causes of action based on state law, as plead in this  
5 complaint, under the supplemental jurisdiction of the federal  
6 court. All the causes of action based on federal law and those  
7 based on state law, as herein stated, arose from a common nuclei  
8 of operative fact. That is, Plaintiff was denied equal access  
9 to Defendants' facilities, goods, and/or services in violation  
10 of both federal and state laws and/or was injured due to  
11 violations of federal and state access laws. The state actions  
12 of Plaintiff are so related to the federal actions that they  
13 form part of the same case or controversy. The actions would  
14 ordinarily be expected to be tried in one judicial proceeding.

15                   **II.**

16                   **THE PARTIES**

17       4.   Defendant S S AUTO REPAIR is, and at all times  
18 mentioned herein was, a business or corporation or franchise  
19 organized and existing and/or doing business under the laws of  
20 the State of California. S S AUTO REPAIR is located at 3575  
21 Buena Vista Avenue, Lemon Grove, CA (hereinafter "the subject  
22 property".) Plaintiff is informed and believes and thereon  
23 alleges that Defendant S S AUTO REPAIR is, and at all times  
24 mentioned herein was, the owner, lessor or lessee of the subject  
25 property and/or the owner and/or operator of the public  
26 accommodation located at the subject property.

27       5.   Defendant CULBERT FAMILY BYPASS TRUST 2-28-97 is, and  
28 at all times mentioned herein was, a Trust created, organized and

1 existing in and/or doing business under the laws of the State of  
2 California. Plaintiff is informed and believes and thereon  
3 alleges that Defendant CULBERT FAMILY BYPASS TRUST 2-28-97 is,  
4 and at all times mentioned herein was, the owner, lessor or  
5 lessee of the subject property.

6       6. Plaintiff is informed and believes, and thereon  
7 alleges, that Defendants and each of them herein were, at all  
8 times relevant to the action, the owners, franchisees, lessees,  
9 general partners, limited partners, agents, employees,  
10 employers, representing partners, subsidiaries, parent  
11 companies, joint venturers and/or divisions of the remaining  
12 Defendants and were acting within the course and scope of that  
13 relationship. Plaintiff is further informed and believes, and  
14 thereon alleges, that each of the Defendants herein gave  
15 consent to, ratified, and/or authorized the acts alleged herein  
16 of each of the remaining Defendants.

17       7. Plaintiff is an otherwise qualified disabled  
18 individual as provided in the Americans with Disabilities Act  
19 of 1990, 42 USC §12102, Part 5.5 of the California Health &  
20 Safety Code and the California Unruh Civil Rights Act, §§51, et  
21 seq., 52, et seq., the California Disabled Persons Act, §§54,  
22 et seq., and other statutory measures which refer to the  
23 protection of the rights of "physically disabled persons."  
24 Plaintiff visited the public accommodation owned and/or  
25 operated by Defendants and/or located at the subject property  
26 for the purpose of availing himself of the goods, services,  
27 facilities, privileges, advantages, or accommodations operated  
28 and/or owned by Defendants and/or located on the subject

1 | property.

2       8. Plaintiff is informed and believes and thereon alleges  
3 that the subject facility has been newly constructed and/or  
4 underwent remodeling, repairs, or alterations since 1971, and  
5 that Defendants have failed to comply with California access  
6 standards which applied at the time of each such new  
7 construction and/or alteration.

III.

## FACTS

10       9. Plaintiff has a mobility impairment and uses a  
11 wheelchair. Moreover, he has had a history of or has been  
12 classified as having a physical impairment, as required by 42  
13 USC §12102(2)(A).

14       10. On or about August 1, 2007, June 12, 2008 and  
15 continuing through the present date, Plaintiff was denied full  
16 and equal access to the facilities owned and/or operated by the  
17 Defendants because the facility and/or subject property were  
18 inaccessible to members of the disabled community who use  
19 wheelchairs for mobility. Plaintiff was denied full and equal  
20 access to portions of the property because of barriers which  
21 included, but are not limited to, inaccessible path of travel,  
22 lack of accessible parking space, as well as, lack of signage  
23 for said space. Plaintiff was also denied full and equal  
24 access because of discriminatory policies and practices  
25 regarding accommodating people with disabilities. Plaintiff  
26 filed this lawsuit to compel compliance with access laws and  
27 regulations.

11. As a result of Defendants' failure to remove

1 architectural barriers, Plaintiff suffered injuries. People  
2 with disabilities, because of the existing barriers, are denied  
3 full and equal access to the Defendants' facilities. The ADA  
4 has been in effect for more than 16 years. Given the vast  
5 availability of information about ADA obligations, including  
6 FREE documents which are available from the U.S. Department of  
7 Justice by calling (800) 514-0301 or at the following web  
8 sites: [www.sba.gov/ada/smbusgd.pdf](http://www.sba.gov/ada/smbusgd.pdf), [www.ada.gov/taxpack.pdf](http://www.ada.gov/taxpack.pdf) and  
9 [www.usdoj.gov/crt/ada](http://www.usdoj.gov/crt/ada), the failure of Defendants to comply with  
10 their barrier removal obligations is contemptible.

11       12. Plaintiff is an otherwise qualified individual as  
12 provided in the Americans with Disabilities Act of 1990, 42 USC  
13 §12102, the Rehabilitation Act of 1973, Section 504 (as amended  
14 29 USC §794) and the California Unruh Civil Rights Act, Civil  
15 Code §§51, 52, 54.1, and 54.3, and other statutory measures  
16 which refer to the protection of the rights of "physically  
17 disabled persons." Plaintiff visited the public facilities  
18 owned and operated by Defendants for the purpose of availing  
19 himself of the goods and services offered and provided by  
20 Defendants and/or for the purpose of obtaining removal of  
21 architectural barriers and/or modification of policies,  
22 practices and procedures to provide accessibility to people  
23 with disabilities. Plaintiff was injured in fact, as set forth  
24 more specifically herein.

25       13. Plaintiff alleges that Defendants will continue to  
26 operate public accommodations which are inaccessible to him and  
27 to other individuals with disabilities. Pursuant to 42 USC  
28 §12188(a), Defendants are required to remove architectural

1 barriers to their existing facilities.

2       14. Plaintiff has no adequate remedy at law for the  
3 injuries currently being suffered in that money damages will  
4 not adequately compensate Plaintiff for the amount of harm  
5 suffered as a result of exclusion from participation in the  
6 economic and social life of this state.

7       15. Plaintiff believes that architectural barriers  
8 precluding Plaintiff full and equal access of the public  
9 accommodation will continue to exist at Plaintiff's future  
10 visits, which will result in future discrimination of  
11 Plaintiff, in violation of the Americans with Disabilities Act.  
12 Plaintiff is currently being subjected to discrimination  
13 because Plaintiff cannot make use of and obtain full and equal  
14 access to the facilities, goods and/or services offered by  
15 Defendants to the general public. Plaintiff seeks damages for  
16 each offense relating to each of Plaintiff's visits to the  
17 subject property when Plaintiff was denied full and equal  
18 access to the subject property or was deterred from attempting  
19 to avail himself of the benefits, goods, services, privileges  
20 and advantages of the place of public accommodation at the  
21 subject property because of continuing barriers to full and  
22 equal access.

23                  IV.

24                  **FIRST CLAIM FOR**  
25                  **VIOLATION OF AMERICAN WITH DISABILITIES ACT**  
26                  **42 USC §12101, et seq.**

26       16. Plaintiff re-alleges and incorporates by reference  
27 each and every allegation contained in paragraphs 1 through 15,  
28 inclusive, as though set forth fully herein.

1       17. Plaintiff was denied full and equal access to  
2 Defendants' goods, services, facilities, privileges,  
3 advantages, or accommodations within a public accommodation  
4 owned, leased and/or operated by Defendants, in violation of 42  
5 USC §12182(a). Plaintiff was, therefore, subjected to  
6 discrimination and is entitled to injunctive relief pursuant to  
7 42 USC §12188 as a result of the actions or inaction of  
8 Defendants.

9       18. Among other remedies, Plaintiff seeks an injunctive  
10 order requiring compliance with state and federal access laws  
11 for all access violations which exist at the property,  
12 requiring removal of architectural barriers and other relief as  
13 the court may deem proper. Plaintiff also seeks any other  
14 order that will redress the discrimination to which he has been  
15 subjected, is being subjected and/or will be subjected.

16    v.

17    SECOND CLAIM FOR  
18    VIOLATION OF CALIFORNIA CIVIL CODE

19       19. Plaintiff re-alleges and incorporates by reference  
20 each and every allegation contained in paragraphs 1 through 18,  
21 inclusive, as though set forth fully herein.

22       20. Based on the facts plead hereinabove and elsewhere in  
23 this complaint, Defendants did, and continue to, discriminate  
24 against Plaintiff and persons similarly situated by denying  
25 disabled persons full and equal access to and enjoyment of the  
26 subject facilities and of Defendants' goods, services,  
27 facilities, privileges, advantages or accommodations within a  
28 public accommodation, in violation of California Civil Code

1        §§51, et seq., 52, et seq., and 54, et seq.

2            21. Defendants' actions constitute a violation of  
3 Plaintiff's rights under California Civil Code §§51, et seq.,  
4 52, et seq., and 54, et seq. and therefore Plaintiff is  
5 entitled to injunctive relief remedying all such violations of  
6 California access laws and standards. In addition, Plaintiff  
7 is entitled to damages under California Civil Code §54.3 for  
8 each offense. The amount of damages suffered by Plaintiff is  
9 not yet determined. When the amount is ascertained, Plaintiff  
10 will ask the Court for leave to amend this complaint to reflect  
11 this amount. Plaintiff is also entitled to and requests  
12 attorneys' fees and costs.

13            22. The actions of Defendants were and are in violation of  
14 the Unruh Civil Rights Act, California Civil Code §§51, et seq.  
15 and therefore Plaintiff is entitled to injunctive relief  
16 remedying all such violations of California access laws and  
17 standards. In addition, Plaintiff is entitled to damages under  
18 California Civil Code §52 for each offense. The amount of  
19 damages suffered by Plaintiff is not yet determined. When the  
20 amount is ascertained, Plaintiff will ask the Court for leave  
21 to amend this complaint to reflect this amount.

22            23. Plaintiff seeks all of the relief available to him  
23 under Civil Code §§51, 52 et seq., 54, 54.1, 54.2, 54.3, and  
24 any other Civil Code Sections which provide relief for the  
25 discrimination suffered by Plaintiff, including damages and  
26 attorneys fees.

27        ///

28        ///

## 1 VI.

2           **THIRD CLAIM FOR**  
3           **VIOLATION OF HEALTH AND**  
4           **SAFETY CODE §19950, ET SEQ.**

5       24. Plaintiff re-alleges and incorporates by reference  
6 each and every allegation contained in paragraphs 1 through 23,  
7 inclusive, as though set forth fully herein.

8       25. Defendants' facilities are public accommodations  
9 within the meaning of Health and Safety Code §19950, et seq.,  
10 and Plaintiff is informed and believes and thereon alleges that  
11 Defendants have newly built or altered the subject property  
12 and/or the subject facility since 1971 within the meaning of  
13 California Health and Safety Code §19959. The aforementioned  
14 acts and omissions of Defendants constitute a denial of equal  
15 access to the use and enjoyment of the Defendants' facilities  
by people with disabilities.

16       26. Defendants' failure to fulfill their duties to provide  
17 full and equal access to their facilities by people with  
18 disabilities has caused Plaintiff to suffer deprivation of  
19 Plaintiff's civil rights, as well as other injuries.

20       27. As a result of Defendants' violations of Health and  
21 Safety Code §§19955, et seq., described herein, Plaintiff is  
22 entitled to and requests injunctive relief pursuant to Health  
23 and Safety Code §§19953, and to reasonable attorney's fees and  
24 costs.

## 25 VII.

26           **FOURTH CLAIM FOR DECLARATORY RELIEF**

27       28. Plaintiff re-alleges and incorporates by reference  
28 each and every allegation contained in paragraphs 1 through 27,

<sup>1</sup> inclusive, as though set forth fully herein.

2       29. An actual controversy now exists in that Plaintiff is  
3 informed and believes and thereon alleges that Defendants'  
4 premises are in violation of the disabled access laws of the  
5 State of California including, but not limited to, Civil Code  
6 §§51, et seq., §§52, et seq., §§54, et seq., Health and Safety  
7 Code §§19950, et seq., Government Code §§4450, et seq. and  
8 7250, et seq., Title 24 of the California Code of Regulations,  
9 and/or Title III of the Americans with Disabilities Act and its  
10 implementing Accessibility Regulations.

11       30. A declaratory judgment is necessary and appropriate at  
12 this time so that each of the parties may know their respective  
13 rights and duties and act accordingly.

VIII.

**FIFTH CLAIM FOR INJUNCTIVE RELIEF**

16       31. Plaintiff re-alleges and incorporates by reference  
17 each and every allegation contained in paragraphs 1 through 30,  
18 inclusive, as though set forth fully herein.

19       32. Plaintiff will suffer irreparable harm unless  
20 Defendants are ordered to remove architectural barriers at  
21 Defendants' public accommodation, and/or to modify their  
22 policies and practices regarding accommodating people with  
23 disabilities. Plaintiff has no adequate remedy at law to  
24 redress the discriminatory conduct of Defendants.

25       33. Plaintiff seeks injunctive relief to redress  
26 Plaintiff's injuries.

27 | //

28 | //

IX.

**JURY DEMAND**

3       34. Pursuant to Rule 38 of the Federal Rules of Civil  
4 Procedure, Plaintiffs hereby request a jury trial.

5 WHEREFORE, Plaintiff prays for judgment against the  
6 Defendants, S S AUTO REPAIR, CULBERT FAMILY BYPASS TRUST 2-28-  
7 97 and DOES 1 through 10, as follows:

1. For injunctive relief, compelling Defendants to comply  
with the Americans with Disabilities Act, the Unruh  
Civil Rights Act and the Disabled Persons Act. Note:  
the plaintiff is not invoking section 55 of the  
California Civil Code and is not seeking injunctive  
relief under that section;
  2. That the Court declare the respective rights and  
duties of Plaintiff and Defendants as to the removal  
of architectural barriers at Defendants' public  
accommodations;
  3. An order awarding Plaintiff actual, special and/or  
statutory damages for violation of his civil rights  
and for restitution including, but not limited to,  
damages pursuant to the applicable Civil Code Sections  
including, but not limited to, §§52 and 54.3 for each  
and every offense of Civil Code §§51 and 54;
  4. An award of compensatory damages according to proof;
  5. An award of up to three times the amount of  
actual damages pursuant to the Unruh Civil  
Rights Act and the Disabled Persons Act; and
  6. An order awarding Plaintiff reasonable attorneys' fees

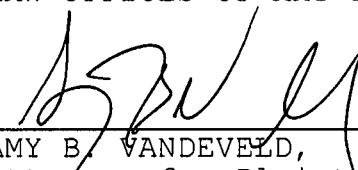
1 and costs;

2 7. Such other and further relief as the Court deems  
3 proper.

4 DATED:

5 6/16/08  
6

LAW OFFICES OF AMY B. VANDEVELD

7   
AMY B. VANDEVELD,  
Attorney for Plaintiff

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1544

(Rev. 07/89)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON REAR OF PAGE TWO OF THIS FORM.)

~~REAR OF PAGE ONE OF THIS FORM.~~

## (a) PLAINTIFFS

San Diego

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF  
(EXCEPT IN U.S. PLAINTIFF CASES)

## DEFENDANTS

SYED M. TAHIR dba S S AUTO REPAIR; CULBERT FAMILY BYPASS TRUST 2-28-97 and 2000ESN 18 PM 4:21 THROUGH 10, Inclusive,

CLERK'S OFFICE, SAN DIEGO COUNTY, CALIFORNIA

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND DEPUTY INVOLVED

## (c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Amy B. Vandeveld, Esq.  
LAW OFFICES OF AMY B. VANDEVELD  
1850 Fifth Avenue, Suite 22  
San Diego, CA 92101 (619) 231-8883

## ATTORNEYS (IF KNOWN)

'08 CV 1082 BEN JMA

## II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- U.S. Government Plaintiff  Federal Question  
(U.S. Government Not a Party)
- U.S. Government Defendant  Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT (For Diversity Cases Only))		
PT	DEF	PT DEF
Citizen of This State	• 1 • 1	Incorporated or Principal Place of Business in This State • 4 • 4
Citizen of Another State	• 2 • 2	Incorporated and Principal Place of Business in Another State • 5 • 5
Citizen or Subject of a Foreign Country	• 3 • 3	Foreign Nation • 6 • 6

## IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

42 U.S.C. Sections 12101-12111, 11281-12184 and 12201 et. seq.

## V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
• 110 Insurance	PERSONAL INJURY	PERSONAL INJURY		410 State Reappointment
• 120 Marine	310 Airplane	• 362 Personal Injury - Medical Malpractice		410 Antitrust
• 130 Miller Act	315 Airplane Product Liability	• 365 Personal Injury - Product Liability		430 Banks and Banking
• 140 Negotiable Instrument	320 Assault, Libel & Slander	• 368 Asbestos Personal Injury Product Liability		450 Commerce/ICC Rates/etc.
• 150 Recovery of Overpayment & Enforcement of Judgment	330 Federal Employers' Liability	• 370 Other Fraud		460 Deportation
• 151 Medicare Act	340 Marine	• 371 Truth in Lending		470 Racketeer Influenced and Corrupt Organizations
• 152 Recovery of Defaulted Student Loans (Excl. Veterans)	345 Marine Product Liability	• 380 Other Personal Property Damage		810 Selective Service
• 153 Recovery of Overpayment of Veterans Benefits	350 Motor Vehicle	• 385 Property Damage Product Liability		830 Securities/Commodities Exchange
• 160 Stockholders Suits	355 Motor Vehicle Product Liability			875 Customer Challenge 12 USC
• 190 Other Contract	360 Other Personal Injury			891 Agricultural Act
• 195 Contract Product Liability				892 Economic Stabilization Act
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		893 Environmental Matters
• 210 Land Condemnation	441 Voting	510 Motions to Vacate Sentence Habeas Corpus		894 Energy Allocation Act
• 220 Foreclosure	442 Employment	530 General		895 Freedom of Information Act
• 230 Rent Lease & Ejectment	443 Housing/Accommodations	535 Death Penalty		900 Appeal of Fee Determination Under Equal Access to Justice
• 240 Tort to Land	444 Welfare	540 Mandamus & Other		950 Constitutionality of State
• 245 Tort Product Liability	446 Other Civil Rights	550 Civil Rights		990 Other Statutory Actions
• 290 All Other Real Property		555 Prisoner Conditions		

## VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

Original Proceeding     2 Removal from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from another district (specify)     6 Multidistrict Litigation     7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:  CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMANDS TO BE  
determined  
at trial

Check YES only if demanded in complaint:  YES  NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

SIGNATURE OF ATTORNEY OF RECORD

DATE

6/16/08

TAC # 152075 C18108 \$350

**UNITED STATES  
DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION**

**# 152075 - TC**

**June 18, 2008  
16:23:28**

**Civ Fil Non-Pris**  
USAO #: 08CV1082  
Judge.: ROGER T BENITEZ  
Amount.: \$350.00 CK  
Check#: BC3417

**Total-> \$350.00**

**FROM: KAREL SPIKES  
VS.  
SYED M TAHIR DBA S S AUTO REP**